



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** ITT Federal Services Corporation

**File:** B-250096

**Date:** January 5, 1993

James M. McHale, Esq., Seyfarth, Shaw, Fairweather & Geraldson, for the protester.  
Garrett L. Ressing, Esq., and Paul M. Fisher, Esq., Department of the Navy, for the agency.  
Linda S. Lebowitz, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

1. Where agency conducted three rounds of discussions with the protester, focusing on staffing and price deficiencies in the protester's proposal, agency was not required in its request to the protester for a best and final offer to advise the protester of its continuing concerns with deficiencies remaining in its proposal.
2. Agency reasonably eliminated the protester's low priced best and final offer from the competitive range as technically unacceptable, without reopening discussions, where previously disclosed staffing and price deficiencies were not resolved by the protester in its best and final offer.

### DECISION

ITT Federal Services Corporation protests the award of a contract to Mason Technologies, Inc. under request for proposals (RFP) No. N62470-90-R-9340, issued by the Department of the Navy for facilities operation, maintenance, and repair services at the United States Naval Station, Roosevelt Roads, Puerto Rico. The protester basically argues that the agency did not conduct sufficient discussions and that the agency improperly eliminated its low priced best and final offer (BAFO) from the competitive range as technically unacceptable.

We deny the protest.

The solicitation, issued on October 28, 1991, contemplated the award of a combination firm, fixed-price/indefinite quantity award fee type contract for a 1-year base period and four 1-year option periods. The solicitation required offerors to submit separate technical and price proposals. The solicitation stated that technical proposals would be evaluated using the following equally important technical evaluation factors: (1) relevant experience and past performance; (2) organization and staffing; (3) work accomplishment and management; and (4) financial condition and capability. Technical proposals would be evaluated using the adjectival ratings of superior, acceptable, marginal, and unacceptable.

The solicitation stated that an offeror's proposed price would be evaluated in terms of an offeror's (1) understanding of the project and ability to successfully organize and perform the contract; (2) adequate estimating procedures and price realism with respect to proposed technical approaches and required personnel, equipment, and other resources; and (3) price reasonableness when compared to similar complex efforts. The solicitation required offerors to submit unit and extended prices for all fixed-price and indefinite quantity work for the base and option periods. The solicitation also required offerors to furnish supplemental pricing information showing its proposed number of employee positions for the performance of the multi-function contract and the number of direct labor full time equivalents (FTE) (defined as "the planned use of 2,087 straight time paid hours in a [12-] month contract period . . .") for fixed-price and indefinite quantity work.

The solicitation stated that the award would be made to the responsible offeror whose proposal, conforming to the solicitation, would be most advantageous to the government considering price and technical factors. In making the award determination, the solicitation stated that technical evaluation factors and price would be considered equally important.

Five firms, including the protester, submitted initial technical and price proposals by the closing date for receipt of proposals on March 9, 1992. The agency rated the protester's initial technical proposal as overall unacceptable. Relevant to this protest, the agency found that the protester's overall staffing was unrealistically low. In its proposal, the protester generally explained that it could reduce its staffing positions and ultimately its price from the base year to the fourth option year through its implementation of total quality management (TQM) initiatives without jeopardizing its ability to satisfactorily perform the contract. The agency concluded, however, that the protester had not proposed a sufficient

and realistic number of personnel to satisfactorily perform the contract. Specifically, the protester's base year permanent staffing positions were 60 percent below the government estimate, the protester's total base year FTEs were 47.4 positions, or 16 percent, below the government estimate, and the protester's fourth option year FTEs were 73.7 positions, or 25 percent, below the government estimate. The agency also concluded that the protester's low priced proposal (just over \$48 million) was unrealistically low at 21 percent below the government estimate.

The agency included the proposals of four firms, including the protester's low priced, technically unacceptable proposal, in the competitive range. By letter dated June 11, the contracting officer conducted discussions with the protester. The contracting officer requested that since the protester's overall proposed staffing appeared to be unrealistically low, that the protester review its staffing to ensure that all solicitation requirements were addressed and to demonstrate its understanding of the solicitation requirements; that the protester address any revisions to its staffing in terms of performing the solicitation requirements; that the protester explain how it could satisfactorily perform the solicitation requirements when there was a large variation between its permanent staffing positions and its FTEs (which included temporary workers); and that the protester show how lower direct labor costs and increased efficiency through TQM initiatives could be achieved in the option years.

The protester submitted a revised proposal by the June 30 closing date in which it slightly increased its staffing positions and FTEs and it increased its price by approximately \$3 million. The protester also generally described its philosophy regarding the implementation of TQM initiatives (in terms of a continuous, integrated effort to achieve the ultimate goal of customer satisfaction). As support for its position that it could achieve efficiencies through the implementation of TQM initiatives and simultaneously perform the agency's requirements in a satisfactory manner, the protester referenced recent contracts where it successfully implemented TQM initiatives and received favorable performance reviews.

The agency rated the protester's revised technical proposal as overall marginal. The agency found that the protester's overall staffing remained unrealistically low because, even with the increases in the protester's staffing positions and FTEs, it still had not proposed a sufficient and realistic number of personnel to satisfactorily perform the contract. Specifically, the protester's base year FTEs were 41.25 positions, or 14 percent, below the revised government

estimate and the protester's fourth option year FTEs were 68.06 positions, or 23 percent, below the revised government estimate. The agency also considered the protester's revised proposal to be unrealistically low priced at 15 percent below the revised government estimate. The agency acknowledged the protester's explanation that efficiencies could be achieved through the use of TQM initiatives, but commented that the protester had not described these initiatives within the framework of the agency's current requirements.

The agency included the protester's low priced, technically marginal revised proposal, and the proposals of two other firms, in the competitive range. By letter dated July 14, the contracting officer conducted another round of discussions with the protester. The contracting officer reiterated his concern that the protester's total FTEs were unrealistically low for the satisfactory performance of the required services. The contracting officer again requested that the protester demonstrate its ability to provide the caliber of labor required to satisfactorily perform the solicitation requirements; that the protester demonstrate its capability to absorb the labor cost differential between its low proposed labor cost and the probable real labor cost; and, referencing the decrease in the protester's FTEs and price by the fourth option year, that the protester explain how it would achieve what the agency considered a particularly high hour per day per employee productivity rate through the implementation of TQM initiatives since such a productivity rate had never been achieved at this facility.

On July 21, the agency conducted oral discussions with the protester, focusing on the protester's low proposed staffing and its goals of achieving efficiency in productivity and direct labor cost savings through the implementation of TQM initiatives.

The protester submitted a second revised proposal by the July 27 closing date in which it increased its staffing positions and FTEs, and it increased its price by approximately \$1.7 million.

The agency rated the protester's second revised technical proposal as overall low acceptable. The agency determined, however, that even with the increases in the protester's staffing positions and FTEs, the protester still had not proposed a sufficient and realistic number of personnel to satisfactorily perform the contract. Specifically, the protester's base year FTEs were 32.07 positions, or 11 percent, below the revised government estimate and the protester's fourth option year FTEs were 59.8 positions, or 20 percent, below the revised government estimate. The

agency compared the actual hour per day per employee productivity rate attained by previous incumbents, which performed using higher staffing, and the protester's proposed higher hour per day per employee productivity rate, which the protester generally stated could be achieved with reduced staffing through the implementation of TQM initiatives, and concluded that the protester had not offered adequate staffing to be able to satisfactorily perform the solicitation requirements. The agency also considered the protester's second revised proposal to be unrealistically low priced at 14 percent below the revised government estimate.

By letter dated August 3, the agency requested the protester, along with the two other firms whose proposals remained in the competitive range, to submit BAFOs on their most favorable price terms by the August 10 closing date. In its BAFO, the protester's staffing positions and FTEs remained unchanged from those in its second revised proposal. The protester did, however, reduce its price by \$1 million, which represented its base profit, stating that it would rely on its ability to earn the award fee as its compensation for satisfactorily performing the contract.

The agency determined that despite three rounds of discussions, the protester's staffing positions and FTEs were less than what the government believed was necessary to satisfactorily perform the contract. The agency found that the protester did not provide a specific explanation or plan for achieving direct labor cost savings through the implementation of TQM initiatives in terms of performing the multiple service functions listed in the solicitation. The agency concluded that over the full term of the contract, reductions in the protester's direct labor costs would produce a reduction in the protester's level of effort in the performance of the contract. In addition, the agency considered the protester's BAFO to be unrealistically low priced at 17 percent below the revised government estimate. Considering both the protester's low proposed staffing and its low price, the agency determined that an award to the protester would present a high degree of risk of unsatisfactory performance. Accordingly, the agency found that the protester was no longer eligible for award. The agency downgraded the protester's BAFO to a technically unacceptable rating, and eliminated the protester's BAFO from the competitive range. On August 19, the agency awarded a contract to Mason, a technically acceptable, higher priced offeror.

The protester argues that the agency improperly failed in its request for BAFOs to advise the protester of the agency's continuing concerns that its proposed staffing and its price, when compared to the revised government estimate,

were too low, and that taken together, posed a high degree of risk of unsatisfactory performance. In this regard, the protester alleges that when it submitted its BAFO, it believed that it had resolved in its favor the agency's concerns with respect to its staffing and price. Because the agency requested the submission of its BAFO on its most favorable price terms, the protester states it made no changes to its proposed staffing, as reflected in its second revised proposal, and only eliminated its \$1 million base profit.

In a negotiated procurement, contracting agencies are required to conduct meaningful discussions, advising offerors whose proposals are in the competitive range of weaknesses, excesses, or deficiencies in their proposals and affording them an opportunity to satisfy the government's requirements through the submission of revised proposals. Federal Acquisition Regulation (FAR) § 15.610; W.M. Schlosser Co., Inc., B-247579.2, July 8, 1992, 92-2 CPD ¶ 8; Califone Int'l, Inc., B-246233; B-246233.2, Feb. 25, 1992, 92-1 CPD ¶ 226. Agencies, however, are not required to notify offerors of deficiencies remaining in their proposals or to conduct successive rounds of discussions until omissions are corrected. Culver Health Corp., B-242902, June 10, 1991, 91-1 CPD ¶ 556. Agencies are not required to "spoon-feed" offerors as to each and every item that must be revised, added, deleted, or otherwise addressed to render a firm's proposal acceptable. HLJ Management Group, Inc., B-248201.2, Dec. 15, 1992, 92-2 CPD ¶ \_\_\_\_; Institute for Human Resources, B-246893, Apr. 13, 1992, 92-1 CPD ¶ 360.

Here, the record shows that the agency conducted two rounds of written discussions and one round of oral discussions with the protester and specifically requested the protester to address how it intended to satisfactorily perform the solicitation requirements with its low proposed staffing and how it would achieve its goal of increased efficiency, productivity, and direct labor cost savings over the full term of this contract through the implementation of TQM initiatives.<sup>1</sup> In response to these discussions, which we

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<sup>1</sup>The protester's assertion that the agency failed to consider its previously performed contracts where it successfully implemented TQM initiatives is not supported by the record. The record shows that the protester was rated acceptable for the relevant experience and past performance technical evaluation factor. Further, our review of the record confirms the agency's finding that the protester merely offered generalizations, without any specific TQM plan tailored to this procurement, which could be substantively evaluated. For this reason, we believe the  
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find were meaningful, the protester ultimately increased its base year FTEs to within 11 percent of the revised government estimate and its fourth option year FTEs to within 20 percent of the revised government estimate. Given the record of discussions in this case and the fact that the protester received on three separate occasions clear notice of the agency's concerns with its overall low staffing, we find that the agency was not required to further advise the protester in the BAFO request of the perceived staffing deficiencies remaining in its proposal which the agency had previously and repeatedly identified to the protester in successive discussions.

The protester maintains that it was misled into reducing its BAFO price because the agency requested it to submit a BAFO on its most favorable price terms. We believe the protester assumed the risk that the \$1 million price reduction in its BAFO to a price, which the agency already considered unrealistically low and which was the subject of subsequent discussions, would again be viewed by the agency as an unresolved deficiency which the protester would not be given another opportunity to address.

The protester also contends that the agency improperly eliminated its low priced BAFO from the competitive range as technically unacceptable.

An agency's request that a firm whose proposal is included within the competitive range submit a BAFO does not mean that the firm's proposal has been deemed fully acceptable for award. See Violet Dock Port, Inc., B-231857.2, Mar. 22, 1989, 89-1 CPD ¶ 292; IPEC Advanced Sys., B-232145, Oct. 20, 1988, 88-2 CPD ¶ 380. The fact that a proposal was initially included within the competitive range does not preclude the agency from later excluding it from further consideration following BAFOs if it no longer has a reasonable chance of being selected for award. An offeror should not expect any further discussions once it has submitted its BAFO. See FAR § 15.609(b); Mark Dunning Indus., Inc., B-230058, Apr. 13, 1988, 88-1 CPD ¶ 364; Space Communications Co., B-223326.2; B-223326.3, Oct. 2, 1986, 86-2 CPD ¶ 377.

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<sup>1</sup>(...continued)

productivity rates of previous incumbents using higher staffing in determining that the protester's proposed staffing approach, as achieved by implementing generally described TQM measures, was not acceptable.

Here, the record shows that after evaluating the protester's BAFO, the agency concluded that the protester no longer had a reasonable chance for award because it failed to specifically demonstrate, in terms of the requirements in the solicitation, how it could reduce its staffing and direct labor costs over the full term of the contract and simultaneously increase, through TQM initiatives, its efficiency and productivity. For this reason, the agency believed that there was a high degree of risk that the protester would not be able to satisfactorily perform the contract. Therefore, prior to making the award decision, the agency downgraded the protester's BAFO to technically unacceptable and eliminated its BAFO from the competitive range. We find the agency reasonably excluded the protester's BAFO from the competitive range as technically unacceptable since the protester failed to resolve in its BAFO the continuing staffing and price deficiencies which were the subject of previous discussions.<sup>2</sup> Since the agency in our view reasonably judged the protester's BAFO to be technically unacceptable, the agency was not required, in making its award decision, to consider the protester's low price. See Elsinore Aerospace Servs., Inc., B-239672.6, Apr. 12, 1991, 91-1 CPD ¶ 368.

Further, we think it is apparent from the record that even if the agency had not eliminated the protester's BAFO from the competitive range as technically unacceptable, the agency acted reasonably in selecting Mason as the most advantageous offeror, regardless of its higher price, because the agency considered Mason's proposal to be realistic in terms of satisfactorily performing the required technical services and it considered Mason's price to be reasonable. The agency believed that Mason demonstrated a good probability of satisfactorily performing the contract with minimal risk.

In this connection, Mason and the other firm whose proposals were included in the competitive range proposed higher staffing, more in line with the revised government estimate


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<sup>2</sup>The record shows that the agency did not find the protester's BAFO technically unacceptable because the protester eliminated base profit from its BAFO price. To the extent the protester explains in its comments to the agency report that, if necessary, it could fund additional staff by using excess direct material costs included in its BAFO, thereby reducing the risk to the agency of unsatisfactory performance due to perceived inadequate staffing, we find, regardless of whether this is an acceptable performance approach, that the protester failed to explain this approach within the four corners of its proposal.



(for example, Mason's overall FTEs in its BAFO were 7 percent below the revised government estimate) and prices which more closely reflected what the agency believed to be the reasonable cost of performance (for example, Mason's BAFO price was 4 percent below the revised government estimate). The agency found Mason's proposal to be highly acceptable and the other firm's proposal to be superior. Both of these proposals contained well-documented justifications for staffing and performance innovations. With respect to Mason, for example, the agency found its proposal superior in offering a state-of-the-art preventative maintenance program, a specific training and TQM program tailored to the requirements in the solicitation, an innovative shift schedule, a documented approach to meeting weekend and high priority service calls, and other technological innovations which would reduce government costs. In contrast, the agency had concerns about the protester's level of staffing, its ability to hire skilled part-time workers, and its reliance on cross-trained, multi-skilled workers. The agency also found that the protester had only generally described its approach to implementing TQM initiatives which, in the agency's view, made its goal of a high per hour per day per employee productivity rate optimistic especially when compared with past contract experience at the facility.

Accordingly, the protest is denied.

  
for James F. Hinchman  
General Counsel